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## FISCAL IMPACT REPORT

**SPONSOR** Trujillo, CA **ORIGINAL DATE** 2/3/15 **LAST UPDATED** 2/17/15 **HB** 268/2/HJC

**SHORT TITLE** Protection Order Exclusion Zones **SB** \_\_\_\_\_

**ANALYST** Sánchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	75.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See narrative	TBD	TBD	TBD	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 123, SB 134, SB 407  
Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
Attorney General Office (AGO)  
Public Defender Department (PDD)  
Department of Public Safety (DPS)  
New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Judiciary Committee amendment to House Bill 268 strikes the imposition of a fine and instead requires the use and cost of a global positioning satellite tracking system to be pursuant to the rules promulgated by the NMCD. The amendment changes fine to costs make those in addition to any other penalties.

Synopsis of Original Bill

House Bill 268 appropriates \$75 thousand to the domestic violence surveillance fund for expenditure in fiscal year 2016, proposes to create a new section to the Family Violence Protection Act in which the court may establish a geographic exclusion zone into which the restrained party cannot enter, and creates the nonreverting “Domestic Violence Surveillance Fund” to be administered by the NMCD, the fines imposed by the court will not to exceed \$750.00 and be based on the restrained party’s ability to pay will be deposited into the fund. Entry into the protected zone shall be considered a violation of the protection order unless found to be inadvertent, enforcement may be through a global positioning satellite tracking system and the protected party, law enforcement and the NMCD shall be notified. The NMCD is identified as the agency to also administer the system.

**FISCAL IMPLICATIONS**

The \$75 thousand appropriation in this bill is a nonrecurring expense to the general fund. Any unexpended balance remaining at the end of fiscal year 2016 shall not revert to the general fund.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

According to NMCD, HB 268 will have an enormous fiscal and operational impact on the NMCD. In FY14, the Probation and Parole Division (PPD) of the NMCD spent approximately \$803 thousand leasing GPS equipment and an additional \$6.6 thousand to replace lost, stolen or broken equipment costs. For the first six months of FY15, PPD has spent \$472.3 thousand on GPS devices. In both fiscal years, the monies were or are being used to lease GPS devices needed to monitor individuals who have been convicted of crimes and placed on probation or parole, primarily sex offenders, repeated offenders, offenders with gang affiliations, etc.

Additionally, HB 268 essentially mandates NMCD to supervise what could easily be a substantial number of unconvicted domestic violence offenders who have violated a civil restraining order, even as the NMCD has a statutory obligation to continue to supervise the approximate 7,143 convicted prison inmates and 17,851 convicted offenders already on probation and/or parole. The bill would substantially increase the number of offenders whom PPD must supervise, but appropriates no money to NMCD to do so.

NMCD’s current incarceration costs average \$43,603 per year in a state-owned and operated prison (men), and the average annual cost in a privately operated prison is \$29,489 (where primarily only level III or medium custody inmates are housed). The cost per PPD for a standard supervision program is \$2,783 per year. The cost per client in Intensive Supervision programs is \$7,205 per year. The cost per client in Community Corrections is \$3,664 per year. The cost per client per year for female residential Community Corrections programs is \$27,412 and for males is \$18,100.

AODA reports in its response that violation of an order of protection is a misdemeanor, and the district attorneys will be involved in violation cases when a criminal penalty is sought. Therefore, district attorneys are likely to be involved in cases interpreting and applying the provisions of HB 268. To the extent HB 268 raises additional issues or results in additional litigation, the district attorneys will have additional costs.

## **SIGNIFICANT ISSUES**

NMCD states that the bill requires it to procure and access the best available GPS technology. Reasonably assuming that the best available technology changes or evolves very quickly, it is likely that the current GPS system used by the NMCD is not or soon will not be the best available technology. Also, the current GPS system or technology used by NMCD does not appear to meet the technology requirements mandated by the bill. Therefore, NMCD will ultimately have to spend additional likely substantial amounts of monies to procure and access this best available GPS technology.

According to AODA, as is the case with all restraining orders, there will be issues involved in providing safety for the protected party, while not unduly restricting the actions of the restrained party. If the program operates as described in HB 268 it would provide a strong enforcement tool for orders of protection, and provide warnings to protected parties when a restrained party enters an exclusion zone.

The AOC states that HB 268 would provide judges another option, other than incarceration, for restrained parties that violate an existing order of protection. Approximately 14 other states have similar legislation which uses GPS technology to monitor domestic violence offenders. This legislation would only apply to restrained parties under a domestic violence order of protection (DVOP) that are found to have violated the DVOP. This new section of the Family Violence Protection Act would give judges the discretion to order a restrained party found guilty of violating a DVOP to be monitored by GPS.

PDD reports that HB 268 allows inadvertence as a defense to violation of the exclusion zone. This complies with *State v. Ramos*, 2013-NMSC-031, the State must prove “two elements of knowledge—the protective order and the presence of the protected party within the protected zone” for conviction. While not mentioned in the bill, duress is always a defense. *See State v. Baca*, 1992-NMSC-055, 114 N.M. 668 (right to present a duress defense is available for any crime except homicide or a crime requiring the specific intent to kill). For the most clarity, duress should be added to the statute.

## **PERFORMANCE IMPLICATIONS**

The bill essentially increases PPD officer caseloads which will cause the targets to be exceeded.

## **ADMINISTRATIVE IMPLICATIONS**

According to NMCD, the amendment therefore imposes an additional administrative burden on the NMCD by requiring it to promulgate these rules. The amendment retains the language requiring that the determination of the cost must be based on the restrained party’s ability to pay. Since many restrained parties are likely to lack the ability to pay much if anything, the amendment (just like the original bill) will result in the NMCD having to pay for the use of the GPS devices out of its budget with little help from the restrained parties and a woefully insufficient appropriation (of \$75,000) from the legislature. The amendment, just like the original bill, imposes an unfunded mandate on the NMCD.

NMCD’s core duty or essential mission is to serve offenders who have been convicted of primarily felony crimes and who have been legally sentenced to incarceration and/or probation and parole, this bill expands its oversight beyond those incarcerated or on probation and parole.

Other states with similar legislation have expanded the GPS monitoring to individuals charged with domestic violence crimes as part of their conditions of release. GPS monitoring reduces the costs of incarceration, while allowing the defendant to continue to work and fulfill child support obligations.

## **RELATIONSHIP**

HB 268 relates to SB 407 (Order of Protection Hearings), HB 123 (Family Violence Permanent No Contact Orders), SB 134 (Family Violence Permanent No Contact Orders).

## **OTHER SUBSTANTIVE ISSUES**

According to AOC, other states with similar legislation have expanded the GPS monitoring to individuals charged with domestic violence crimes as part of their conditions of release. GPS monitoring reduces the costs of incarceration, while allowing the defendant to continue to work and fulfill child support obligations. This bill, however, does not address a false reporting of the GPS system as a defense to this presumed violation.

PDD states that a wholesale exclusion of certain geographical zones, instead of prohibiting the restrained person from being within a defined distance of the protected party, may have the unintended consequence of preventing the restrained party from working or obtaining an education. For example, if both parties attend the University of New Mexico and the judge orders a zone of exclusion to be the University, the restrained party can no longer attend the university at all rather than rearrange class schedules to avoid the protected parties. The same could happen at work – if both parties work at one place, shifts could be arranged so they parties avoid one another but a geographical exclusion would require the restrained party to find different employment.

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